UNITED STATES COURT OF INTERNATIONAL TRADE

HEBEI FOREIGN TRADE AND ADVERTISING CORP.	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Court No. 09-00524**
	)	
UNITED STATES; UNITED STATES DEPARTMENT OF COMMERCE	)	
	)	
	)	
Defendants.	)	
	)	

AMENDED COMPLAINT

Plaintiff Hebei Foreign Trade and Advertising Corporation ("Hebei Foreign Trade"), by and through its counsel, alleges as follows:

I. PROCEEDING UNDER REVIEW

1. This action seeks judicial review of certain aspects of the Final Results in the Department of Commerce's ("Commerce") antidumping duty administrative review of the antidumping order on certain activated carbon from the People's Republic of China, First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 Fed. Reg. 57,995 (Dep't Commerce Nov. 10, 2009) ("Final Results"), as amended by Certain Activated Carbon from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 74 Fed. Reg. 66,952 (Dep't Commerce December 17, 2009) ("Amended Final Results"). The review in question covered entries of certain activated carbon for the period October 11, 2006 through March 31, 2008.

II. JURISDICTION AND STANDARD OF REVIEW

2. Plaintiffs bring this action pursuant to the Tariff Act of 1930, as amended ("the Act"), sections 516A(a)(2)(A)(i)(I) and 516A(a)(2)(B)(iii), 19 U.S.C. §§ 1516a(a)(2)(A)(i)(I) and (a)(2)(B)(iii) (2006).

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2).

4. The standard of review, as set forth in 19 U.S.C. § 1516a(b)(1)(B)(i), is whether the determinations, findings or conclusions of Commerce were "unsupported by substantial evidence on the record, or otherwise not in accordance with law."

III. STANDING AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. Plaintiff is an exporter of certain activated carbon into the United States. Plaintiff is, therefore, an "interested party" within the meaning of sections 771(9)(A) and 516A(f)(3) of the Act, 19 U.S.C. §§ 1677(9)(A) and 1516a(f)(3). Moreover, Plaintiff was also "a party to the proceeding" which led to the determination that is being challenged herein by filing with Commerce during the course of the review (i) a request for administrative review (April 30, 2008), (ii) a separate rate certification (September 15, 2008), (iii) a supplemental questionnaire response (September 23, 2008) and (iv) ministerial error comments (November 12, 2009).

6. Accordingly, Plaintiff has standing to commence this action pursuant to 28 U.S.C. § 2631(c).

7. Although Plaintiff did not file a case or rebuttal brief with Commerce, that fact does not deprive this Court of the ability to hear this case. Commerce awarded Plaintiff the separate rate at the preliminary results. Certain Activated Carbon from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and

Extension of Time Limits for the Final Results, 74 Fed. Reg. 21,317, 21,323–324 (May 7, 2009) ("Preliminary Results"). Until the Final Results, Commerce did not state that it intended to assign Hebei Foreign Trade the adverse facts available PRC-wide rate. This Court has found that a plaintiff cannot be found to have failed to exhaust its administrative remedies where its first notice of being assigned a facts available rate occurs upon the issuance of Commerce's final results even where information put on the record by Commerce prior to the filing of case briefs raises questions as to the respondent's information. See, e.g., Qingdao Taifa Group Co. v. United States, __ CIT __, 637 F. Supp. 2d 1231, 1236-37 & n. 1 (2009) ("Because the *Preliminary Results* were favorable to {respondent}, and Commerce did not address the AFA issue until after the deadline for case briefs … {respondent} did not have a fair opportunity to challenge these issues at the administrative level …. The exhaustion doctrine therefore does not preclude the court's review of {respondent's} claims."); see also Saha Thai Steel Pipe Co. v. United States, 17 C.I.T. 727, 828 F. Supp. 57, 59-60 (1993) (holding that a respondent was not required to file a case or rebuttal brief to exhaust its administrative remedies where it had "received all the remedy it sought from the preliminary determination, *i.e.*, it received a very low company-specific duty assessment," but Commerce assigned a higher country-wide rate in the final determination). Thus, the exhaustion doctrine does not preclude this Court's review.

IV. TIMELINESS OF THIS ACTION

8. On November 10, 2009, Commerce published the Final Results.

9. Plaintiff filed its summons and complaint on December 10, 2009, within 30 days of the publication of the Final Results. Thus, Plaintiff's summons and complaint were timely filed pursuant to 19 U.S.C. §§ 1516a(a)(2)(A)(i)(I) and (B)(iii) and USCIT R. 3(a)(2), 6(a).

10. In addition, this Amended Complaint is timely filed under USCIT R. 15(a)(1)(B) because it is being filed within 20 days of the filing of Plaintiff's complaint.

V. STATEMENT OF FACTS

11. Commerce initiated the antidumping investigation of certain activated carbon from the People's Republic of China on March 8, 2006. See Initiation of Antidumping Duty Investigation: Certain Activated Carbon From the People's Republic of China, 71 Fed. Reg. 16,757 (Apr. 4, 2006). The International Trade Commission (the "Commission") simultaneously conducted its investigation. See Certain Activated Carbon from China, 71 Fed. Reg. 13,430 (Int'l Trade Comm'n Mar. 15, 2006).

12. On April 27, 2007, Commerce issued an antidumping duty order on certain activated carbon from the People's Republic of China following an affirmative dumping determination by Commerce and an affirmative injury determination by the Commission. See Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China, 72 Fed. Reg. 20,988 (Dep't Commerce Apr. 27, 2007). The antidumping duty order remains in effect.

13. Hebei Foreign Trade was awarded a separate rate during the original investigation. Id.

14. On February 24, 2009, Hebei Foreign Trade requested a changed circumstances review ("CCR"), on the basis that it had been succeeded by Hebei Shenglun Advertising and Exhibit Corporation.

15. Commerce initiated the CCR on April 30, 2009. Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review, 74 Fed. Reg. 19,934 (Apr. 30, 2009).

16. On June 4, 2008, Commerce published a notice in the Federal Register indicating that it was initiating an administrative review. Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 Fed. Reg. 31,813 (June 4, 2008).

17. Commerce named three companies as mandatory respondents – Jacobi Carbons AB, Calgon Carbon (Tianjin) Co. Ltd. and Jilin Bright Future Chemicals Company, Ltd. (which later withdrew its request for review). Commerce also individually examined Guanghua Cherishmet Activated Carbon Co., Ltd.

18. Commerce conducted reviews of other companies not selected as mandatory respondents. Among these was Hebei Foreign Trade.

19. Hebei Foreign Trade submitted a timely response to Commerce's separate rate certification on September 16, 2008 demonstrating that it operates independently of Chinese government control.

20. On May 7, 2009, Commerce issued its preliminary results of the administrative review, determining Hebei Foreign Trade to have established its eligibility for the separate rate by proving its independence from the Chinese government. Preliminary Results, 74 Fed. Reg. at 21,323–324.

21. On September 22, 2009, Commerce put on the public record in the first administrative review, documents from the CCR.

22. On September 24, 2009, Commerce rescinded the changed circumstances review on the basis that "there has been no change in Hebei Foreign's operations from the period of investigation, and because this CCR was initiated based on information that was later determined to be false, and the certifications submitted by Hebei Foreign are questionable." Certain

Activated Carbon from the People's Republic of China: Notice of Rescission of Changed Circumstances Review, 74 Fed. Reg. 48,723, 48,724 (Sept. 24, 2009).

23. Commerce issued no further questionnaires in the first administrative review to Hebei Foreign Trade at any time before issuing the Final Results.

24. On November 10, 2009, Commerce issued the Final Results. Commerce determined the individual antidumping rates of the individually-investigated respondents to be as follows: Calgon Carbon (Tianjin) Co., Ltd.: 14.58%; Jacobi Carbons AB: 18.22%; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.: 18.40%; and Jilin Bright Future Chemicals Company, Ltd.: 228.11%. Based on the antidumping rates determined for the mandatory respondents, Commerce calculated a rate of 16.40% for the separate rate respondents. It determined the PRC-wide entity rate to be 228.11%.

25. Commerce assigned Hebei Foreign Trade the adverse facts available PRC-wide entity rate of 228.11%, stating that "information on the record … shows evidence that Hebei Foreign's separate rate status was based on incorrect information, resulting in the revocation of Hebei Foreign's separate rate" and that "Hebei Foreign has not submitted any information to contradict the evidence on the record." Final Results, 74 Fed. Reg. at 57,998. This allegedly incorrect information pertained to the individual who signed Hebei Foreign Trade's separate rate certification and whether he was competent to do so. See Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review, Cmt. 22 (Nov. 3, 2009).

26. On November 12, 2009, Hebei Foreign Trade's former counsel submitted ministerial errors to Commerce explaining that "{t}he administrative record as a whole"

established that Hebei Foreign Trade's certifications to Commerce were accurate, citing numerous submissions to Commerce establishing this fact.

27. On December 17, 2009, the Amended Final Results were published in the Federal Register. In the Amended Final Results and accompanying memorandum, Commerce did not correct its findings regarding Hebei Foreign Trade, stating that its "determination to revoke Hebei Foreign Trade's separate rate was not 'an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'" Memorandum from Robert Palmer to James C. Doyle re: Certain Activated Carbon from the People's Republic of China: Allegation of Ministerial Errors in the Final Results of the First Administrative Review, Cmt. 7 (Dec. 10, 2009).

VI. STATEMENT OF THE CLAIMS

COUNT 1

28. Plaintiff herein incorporates by reference paragraphs 1 through 27 supra, of this complaint.

29. Commerce abused its discretion and legally and factually erred in revoking Hebei Foreign Trade's separate rate status and assigning Hebei Foreign Trade the adverse facts available PRC-wide antidumping rate and its assignment of such rate to Hebei is unsupported by substantial evidence on the record and otherwise not in accordance with law.

COUNT II

30. Plaintiff herein incorporates by reference paragraphs 1 through 29 supra, of this complaint.

31. Commerce abused its discretion and legally and factually erred in failing to request clarification expressly from Hebei Foreign Trade regarding information from the changed circumstances review that it considered to be in conflict with information on the record in the first administrative review.

COUNT III

32. Plaintiff herein incorporates by reference paragraphs 1 through 31 supra, of this complaint.

33. Commerce abused its discretion and legally and factually erred in failing to take into consideration Hebei Foreign Trade's ministerial error comments and its failure to take such comments into consideration and award Hebei Foreign Trade the separate rate was unsupported by substantial evidence and otherwise not in accordance with the law.

DEMAND FOR JUDGMENT AND PRAYER FOR RELIEF

34. WHEREFORE, and as challenged herein, Plaintiff respectfully prays that this Court:

(1) find that Commerce's actions as described in Counts I, II and III were unsupported by substantial evidence and otherwise not in accordance with law;

(2) order Commerce to award Hebei Foreign Trade the separate rate;

(3) in the alternative, order Commerce to reopen the record for further findings on the issue of the eligibility of Hebei Foreign Trade for the separate rate;

(4) order Commerce to publish notice in the Federal Register of the final decision rendered by this Court, after this action has been considered;

(5) order Commerce to issue liquidation instructions to U.S. Customs and Border Protection consistent with this Court's decision; and

(6) provide such other relief as this honorable Court deems proper.

Respectfully submitted,

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